

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SILO RESTAURANT INC. AND
PHIL DYER

Plaintiff,

v.

ALLIED PROPERTY AND CASUALTY
INSURANCE COMPANY

Defendant.

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CIVIL ACTION NO. 5:18-cv-1176

NOTICE OF REMOVAL

Defendant Allied Property and Casualty Insurance Company (“Defendant”), through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, files this Notice of Removal of the lawsuit captioned *Silo Restaurant Inc. and Phil Dyer v. Allied Property and Casualty Insurance Company*; Cause No. 2018CI19413, In the 37th Judicial District Court of Bexar County, Texas.

**I.
BACKGROUND**

1. Plaintiffs Silo Restaurant Inc. and Phil Dyer (hereinafter, “Plaintiffs”) initiated the present action by filing their Original Petition in Cause No. 2018CI19413, in the 37th Judicial District Court of Bexar County, Texas on October 8, 2018 (the “State Court Action”).¹

2. Defendant appeared and answered on November 2, 2018, asserting a general denial to the claims and allegations made in Plaintiffs’ Original Petition.²

3. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon Defendant in the State Court Action are incorporated in **Exhibit A**.

¹ See **Exhibit A**, Plaintiffs’ Original Petition with citation.

² See **Exhibit B**, Defendant’s Original Answer.

4. Pursuant to 28 U.S.C. 1446(d), promptly after filing this Notice of Removal, Defendant will give written notice of the removal to Plaintiffs through their attorney of record and to the clerk of the 37th Judicial District Court of Bexar County, Texas.

5. Pursuant to 28 U.S.C. §§ 1446(b)(1) and 1446(c)(1), this Notice of Removal has been timely filed within thirty (30) days of service on Defendant of Plaintiffs' Original Petition and less than one year after the commencement of this action.

II. JURISDICTION

6. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332 and the matter is removable to this Court pursuant to 28 U.S.C. § 1441(a) because there is complete diversity of citizenship between the properly joined parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

A. Diversity of the Parties

7. Plaintiff Silo Restaurant Inc. is a corporation duly formed and existing under the laws of the State of Texas, doing business in San Antonio, Bexar County, Texas. *See Exhibit A, ¶II.*

8. Plaintiff Phil Dyer is an individual and resident of Texas, therefore Dyer is a citizen of Texas. *See Exhibit A, ¶ II.*

9. Defendant Allied Property and Casualty Insurance Company is organized under the laws of the State of Iowa and maintains its principal place of business in Des Moines, Iowa. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Allied is a citizen of Iowa.

10. Accordingly, there is complete diversity between the properly joined parties pursuant to 28 U.S.C. § 1332(a).

B. Amount in Controversy

11. Plaintiffs' Original Petition states that "Plaintiffs seek monetary relief of over \$200,000.00 but not more than \$1,000,000.00 dollars." *See* Plaintiff's Original Petition, *See Exhibit A*, ¶ VIII. The threshold for diversity jurisdiction, \$75,000, is therefore met by the allegations of Plaintiff's Original Petition.

12. Plaintiffs further seek compensation for (1) actual damages, (2) consequential damages (3) treble damages, (4) punitive damages, (5) exemplary damages, (6) 18% penalty interest attorney's fees, (7) pre and post-judgment interest, and (8) attorney's fees. *See Exhibit A*, §§ VIII-XI. Plaintiffs have alleged that Defendant's conduct was wrongful and done knowingly, entitling them to a trebling of actual damages under Texas Insurance Code Chapter 541. *See Exhibit A*, §X; Tex. Ins. Code sections 541.002 & 541.152. Penalties, exemplary damages, and attorneys' fees are included as part of the amount in controversy.³

13. The amount in controversy plainly exceeds \$75,000, exclusive of interest and costs. *See Exhibit A*. Accordingly, the amount in controversy requirement of 28 U.S.C. § 1332(b) is satisfied.

**III.
CONCLUSION**

14. Removal of this action under 28 U.S.C. § 1441(a) is proper as the district courts of the United States have original jurisdiction over the matter pursuant to 28 U.S.C. § 1332, and as all requirements for removal under 28 U.S.C. § 1446 have been met.

15. WHEREFORE, Defendant Allied Property and Casualty Insurance Company hereby provides notice that this action is duly removed.

³ *See H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 330 (5th Cir. 2000); *see also St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

Respectfully submitted,

/s/ Patrick M. Kemp

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served via certified mail, return receipt requested on this 9th day of November, 2018, to:

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/s/ Patrick M. Kemp

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